



June 24, 2002

Mr. Ed Snyder
Deputy City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2002-3433

Dear Mr. Snyder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164727.

The City of Denton (the "city") received two requests for several categories of information pertaining to City Councilman Raymond Redmon. You state that you are making some of the requested information available to the requestor. However, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990).

You state that Exhibits B-1 through B-8 are communications between the city and its attorneys. You further inform us that the communications "were made to facilitate the rendition of legal services." Upon review, we agree that Exhibits B-1 through B-8 are communications which reveal the city attorney's legal advice or opinion to the city. Accordingly, the city may withhold these documents pursuant to section 552.107 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses

information protected by other statutes. Section 6103(a) of title 26 of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (M.D.N.C. 1989). Our office has specifically held that tax return information is confidential. Attorney General Opinion H-1274 (1978). Therefore, the city must withhold the tax return information contained in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3.

Some of the documents in Exhibit C contain information about Councilman Redmon's financial assets which was submitted as part of his application for housing rehabilitation assistance. Upon review, we conclude that the city must withhold the information we have marked pursuant to section 552.101 of the Government Code.

Exhibit C also contain a social security number which may be excepted under section 552.117(1). Section 552.117 excepts from disclosure the social security number of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold

information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the official at issue here timely elected to keep his social security number confidential, the city must withhold the official's social security number. The city may not withhold this information under section 552.117 if the official did not make a timely election to keep his social security number confidential.

If the official did not timely elect to keep his social security number confidential, the number may nevertheless be confidential. Under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), a social security number is confidential if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing the official's social security number the city should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Exhibit C also contain account numbers which are excepted from public disclosure under section 552.136. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the account numbers that the city must withhold under section 552.136.

In summary, the city must withhold tax return information pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the personal financial information, which we have marked, under section 552.101 in conjunction with common law privacy. The city must withhold the official's social security number if the official timely elected to keep his personal information confidential. The city must withhold the social security number under section 552.101 of the Government Code in conjunction with the federal Social Security Act if the social security number was obtained or is maintained by the city pursuant to a provision of law enacted on or after October 1, 1990. The city must withhold the account numbers, which we have marked, under section 552.136. The city may withhold Exhibits B-1 through B-8 under section 552.107.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

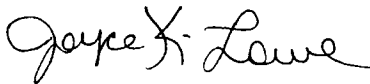
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Joyce K. Lowe".

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID#

Enc: Submitted documents

c: Mr. Willie Hudspeth
c/o Ed Snyder
City of Denton
215 East McKinney
Denton, Texas 76201
(w/o enclosures)

Ms. Tabitha Chancellor
Denton Record-Chronicle
314 East Hickory Street
Denton, Texas 76201
(w/o enclosures)